

III. REMARKS

Claims 1-40 are pending in this application. By this amendment, claims 1, 15, 17, 18, 32, 34, 36, 39 and 40 have been amended and claims 11, 28 and 35 have been canceled. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1, 18, 35, 36, 39 and 40 are objected to for alleged informalities. Claims 18-34 are rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Claim 18 is rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Claims 1, 5, 7, 10-11, 14-15, 17-18, 22, 24, 27-28, 31-32, 34-35, 36-37, 39 and 40 are rejected under 35 U.S.C. §103(a) as allegedly being anticipated by Cherkasova *et al.* (U.S. Patent No. 6,823,392), hereafter “Cherkasova,” in view of Rumsewicz *et al.* (U.S. Patent No. 6,832,255 B1), hereafter “Remsewicz.” Claims 2-3, 6, 19-20 and 23 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Cherkasova in view of Remsewicz and further in view of Webb *et al.* (U.S. Patent Pub. No. 2002/0083342), hereafter “Webb.” Claims 4 and 21 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Cherkasova in view of Remsewicz and further in view of Kubo *et al.* (U.S. Patent No. 2002/0059436), hereafter “Kubo.” Claims 12-13, 16, 29-30, 33 and 36 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Cherkasova in view of Remsewicz and further in view of Bondarenko *et al.* (U.S. Patent No. 6,389,028), hereafter “Bondarenko.”

Claims 8-9 and 25-26 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Cherkasova in view of Remsewicz and further in view of Slotznick (U.S. Patent No. 6,011,537), hereafter “Slotznick.”

A. OBJECTION TO CLAIMS 1, 18, 35, 36, 39 AND 40

The Office has objected to claims 1, 18, 35, 36, 39 and 40 for alleged informalities. In particular, the Office states that the words “desired be” should read “desired to be”. Applicants respectfully submit that a closer reading of the entire phrase with a pause between the words “desired” and “be” should lead to a conclusion that the phrase is appropriate as written. The Office also states that there needs to be an article at the beginning of claims 18 and 39. Applicants have amended the claims to include an article. Accordingly, Applicants respectfully request that the object be withdrawn.

B. REJECTION OF CLAIMS 18-34 UNDER 35 U.S.C. §101

The Office has asserted that claims 18-34 are not directed to statutory subject matter. Applicants have amended claim 18 to include processor and a memory. Accordingly, Applicants request that the rejection be withdrawn.

C. REJECTION OF CLAIM 18 UNDER 35 U.S.C. §112, SECOND PARAGRAPH

The Office has asserted that claim 18 is indefinite. Applicants have amended claim 18 to remove the words “...the steps of” from the claim. Accordingly, Applicants request that the rejection be withdrawn.

D. REJECTION OF CLAIMS 1, 5, 7, 10-11, 14-15, 17-18, 22, 24, 27-28, 31-32, 34-35, 36-37, 39 AND 40 UNDER 35 U.S.C. §103(a) OVER CHERKASOVA IN VIEW OF RUMSEWICZ

With regard to the 35 U.S.C. § 103(a) rejection over Cherkasova in view of Rumsewicz, Applicants assert that the cited reference does not teach or suggest each and every feature of the claimed invention. For example, with respect to independent claims 1, 18, 35, 36, 39 and 40, Applicants submit that the cited references fail to teach or suggest, *inter alia*, determining, responsive to determining that said access level is currently at a desired maximum, determining whether said scarce resource is able to accommodate immediate access by said late requester. In response to the Examiner's suggest, Applicants have amended these claims to further define the late requestor. Accordingly, Applicants respectfully request that the rejections be withdrawn.

With respect to dependent claims 10 and 27, Applicants respectfully continue to submit that the cited references do not teach or suggest that determining whether said access level for said scarce resource is at a desired maximum consists of: tracking the number of users currently accessing the scarce resource; and comparing said number with a fixed predetermined maximum value. Rather, Cherkasova teaches a variety of factors for determining whether sufficient resources are available to provide an adequate level of service to the new sessions including: measuring the CPU utilization, measuring the utilization of the network pathway, measuring the utilization of a storage subsystem, measuring the percentage of new sessions refused and a combination of these measurements. However, none of theses measurements of Cherkasova is taught as consisting of tracking the number of users currently assessing and comparing that number with a fixed predetermined maximum value. To this extent, nowhere does Cherkasova

teach that a desired maximum for access to a scarce resource is determined solely by a comparison of a predetermined maximum value and a tracked number of users currently assessing the scarce resource. Rumsewicz does not cure this deficiency. Accordingly, Applicants request that the Office withdraw its rejection.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserve the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

B. OTHER REJECTIONS OF CLAIMS UNDER 35 U.S.C. §103(a)

With regard to the 35 U.S.C. §103(a) rejections, Applicants submit that each claim in the rejections includes at least one of the features of the above claims and/or depends from one of the above claims. As such, Applicants herein incorporate the arguments presented above. Furthermore, Applicants submit that all dependant claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicants respectfully request withdrawal of this rejection.

IV. CONCLUSION

In addition to the above arguments, Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not

acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

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/Hunter E. Webb/

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